

The Ethics of Punishment

by Walter Warren Filkins

1904

Submitted to the Department of Philosophy of
the University of Kansas in partial fulfillment of
the requirements for the Degree of Master of Arts

Master Thesis

Ethics

Filkins, W. W. 1904
1901 ?

Ethics of punishment.

Thesis

The Ethics of Punishment
by

W. W. Wilkins, 1901? (1904)?

The Ethics of Punishment.

The subject of Ethics is closely allied with many other forms of inquiry. Ethics is the science of human duty; the science of right and right character and conduct. The Ethics of Punishment then would be the science of human duty as it pertains to human punishment and the right character and conduct in relation to it.

The first thought that comes to the mind when one thinks of punishment is that of good and bad. What do the terms mean? What is good and bad? These terms are very closely associated with all forms of human conduct. Men try to do what is called good and try to abstain from doing what is called bad. The mental processes which answer to what one means by the conception of the good are



W. T. T. T.

The Ethics of Punishment
1901

vague and comprehensive. Good and bad which relate to physical good and physical bad are well known. Good and bad tastes, good and bad sounds, good and bad smells, are easy to characterize. It is easy to discriminate between the good and the bad in the medium and ordinary sense. The inquiry as to conduct is vastly different as compared with a picture or a tune.

Every person has his own view, his own judgment and feelings in regard to any piece of human conduct. His opinion is promptly rendered for his standard is within his own mind. The general standard may be set by society, but his own personal judgment and opinion comes from within and is rendered according to his own ideas and standard. Every human being very promptly

renders judgment in regard to stealing, lying or murdering. Each judgment will be different in some degree. The murderer who does not abhor such deeds sees good in the act. It may be well done. It may be skillfully done. The assassin sees good and benefit to the government and society in general, if he be an anarchist. Different judgments come from different people and the good or bad of any degree is thought of with reference to the good and bad states or activities in self. If it does not relate to self it is neither good nor bad. Good and bad then are terms which are applied to human conduct and which arise within one's self and are conceived by one's self on account of the subjective point of view. All

conduct is good or bad as the effects are either good or bad upon self. One may say that taking life is bad, that the murder is bad, and yet that same person might believe in capital punishment and say that the executioner's act is good. The same food may be either good or bad as the effects are either good or bad upon different people.

Some misfortune happens and another is benefited by it. "An ill wind blows nobody good," another remarks. One can hardly conceive of any misfortune to man which is absolutely void of good effects to at least some one. The terms good and bad, therefore, are very chargeful and mean one thing to one person and another thing to another person.

What is good or bad is decided in one's own consciousness. His obligations, his duties and feelings are decided by his own knowledge of truth as he sees it and feels it. Therefore, knowledge of the truth, of the right, is necessary for a decision for without knowledge there is nothing in one's consciousness upon which to base a decision. The good man, the man of virtue is the one who has a high ideal of human conduct and so lives that each act, each day of his life brings him closer to his ideal. He must progress. His habits must be so formed that he will unconsciously do the good and avoid the bad acts of life. When one begins a course of good conduct, each act is decided upon separately. Each

decision is the slow process of the formation of the habit. In the beginning each individual achievement has its accompanying feelings, its conflicts of feelings and deliberations coupled with the determination to do a certain act or deed a certain way. After a series of such phenomena the act is done without thought and in an automatic fashion. It has a vast influence over character and over the good conduct of the individual.

Discipline influences habit, and therefore character and conduct. Self-sacrifice is a strong factor in conduct for with self-sacrifice comes an elevation of the good of the community. Self-sacrifice is good in itself on account of the wholesome effect

upon the individual.

There are three kinds of good, the esthetical, the eudemonistic, and the ethical. The first is the good derived from the beautiful, the second is the good derived from happiness, the third, good derived from conduct.

Happiness is good as an end in itself, as is also the good derived from the beautiful, but the good derived from conduct is higher than the other two.

The good man is brave, courageous, true, wise, just, and does not lack in sympathy and kindness. He guards himself in all of his relations to others with the feelings of broadest benevolence.

"The good man," says Ladd in his *Philosophy of Conduct* (p. 436) "is he who realizes the virtuous life

in all his varying relations with other men in society."

Realizing is actual practicing of courage, temperance, truth, wisdom and kindness.

A man's conduct should conform to his ideal man. A good man's conduct must be in accordance with a progressively good and virtuous life. Every human being has an ideal. That ideal may be a living person whose conduct and relations toward men have been exemplary in every way or it may be only an imaginary life. The ideal is always before the mind's eye and the truly good man will constantly strive to attain his ideal. The fact that one has an ideal is influential on his conduct, for one could scarcely do wrong acts

without mental comparison of the acts as done and the acts as they ought to have been done. With this constant picture before one his attainment of high character is more certain than without it, and his efforts will be rewarded, his conduct will be better and his influence upon all will be wholesome and good. As one moves along in life his development is certain. If it is a progressive development and growth according to a high ideal, the conduct of such a one will, as a matter of course, be good, and his life will be a benefit to his fellowmen.

"The most really good man is, then, he who in his daily life habitually by the employment of all his energies of mind, heart, and will, moulds himself according

to that particular ideal of morality which seems to him most worthy. The ideal of morality is always on the one hand, concrete and individual, but it is on the other hand social and having reference to the part which every individual takes in the community of moral beings." (Ladd, Philosophy of Conduct. Ch. 18).

A Conception of Evil.

God created man in his own image and endowed him with certain powers and mental faculties greater than those of any earthly animal. He placed ~~him~~ ^{him} in the best circumstances and environments, gave him a companion and put it within his power to satisfy all of his wants and desires and then ~~he~~ left him to the decisions of his own judgment.

In the beginning there was no evil, or no good, for without man there could be neither and with man's coming upon the earth, unless there was evil there could be no good, for in order to have one it is necessary to have the other. Logically then it follows that to have good there must be evil and to have both it becomes

necessary for man to have knowledge, a discriminating knowledge between the actions, the motives, and the results, in order to know the resultant conduct and its meaning.

An ignorant man, ignorant in the sense of consciousness of right and wrong, may not do the wrong acts of life, and yet not necessarily be a good man. He might do the wrong acts of life and yet not be an evil man. There must be a knowledge of the meaning of the resultant conduct in order for him to know whether he is good or bad. Ignorance implies no temptation and also the lack of all corresponding virtue as well. Virtue is not without strife, but is the highest result that is obtained where greatest strife is present.

To have a thorough knowledge of evil one must know its bad effects and the results of all the attending circumstances. To be good one must know evil all the time. The illustration of the flying arrow given by Professor Royce is a good one. The arrow though flying at a very fast rate must be somewhere and to be somewhere it must be at some particular point at some given time and therefore at rest at some given point. Though flying it is at rest at some given point at some particular time. To die is to live for the more active one is the more of his own bodily tissue he consumes and so while ^{one} is living one is at every moment dying. It is the inactive man, the one who does neither mental nor physical labor that does not live in the fullest sense. The man who lives in the greatest degree

is the man who uses up the most of his own body in service in a given period. It follows that he who lives most, dies most and in his dying he is living. So when one is good it is because of his knowledge of evil. He who knows the most evil and resists it and lives a virtuous life is the man who has the greatest amounts of good in him. What virtue is there in such goodness as that of one who has no temptations to resist? He is not good in the real sense whose life is never tempted; who has no battles to fight; who lives a negatively good life. Some may call it goodness and some may call it virtue, but it is a mere negative goodness, a mere negative virtue, which is in reality no virtue at all.

In order to have a perfect moral

System there must be evil for there could be no good, no virtue, no growth, no advancement without. To have knowledge ~~and~~ of good and evil and to possess the power to choose between them man has been endowed with a conscience. A choice involves the knowledge of something against one and in favor of the other. That choice is made by the conscience and the cause of the choice is the temptation. The decision which is the result of the choice caused by the temptation is one of our powers.

If one has the power to choose as he wills, one must be a free being. The moral choice, an inner one, is the condemnation of a rejected motive as well as the approval of an accepted one. A person with but one motive could have no conscience for a conscience implies a decision.

Sin is the result of yielding to temptation and although some believe that sin is the result of a free will Professor Raye proves that it is not. If sin is the result of a free will, all the suffering which is the result of sin would fall upon the sinner. But the father whose sin has caused his child to be born deformed, blind, or unhealthy creature is the one who ought to suffer. Such a father probably does suffer, but the child, a pure creature of God's own creation and man's reproduction, has known no evil and has not sinned yet from birth has suffered. Sin, therefore is not the result of the free will of God's agents since suffering may result from another's sin.

An illustration also from Raye "Good and Evil" (p. 12) is offered for consideration.

"A suffers ill, B sees A suffering. Can B, the onlooker, help his suffering neighbor A? Can he comfort him in any true way? No, a miserable comforter must be prove as large as B believing in our present hypothesis things strictly to the logic of this abstract free will explanation of the origin of evil. To A he says, "Well, you suffer from your own ill doing. I therefore simply cannot relieve you. This is God's world of justice. If I tried to hinder God's justice from working in your case I should at best only postpone your evil day. It would come for God is just. You are hungry, naked, sick, in prison. What can I do about it? All this is your own deed come back to you. God himself though justly punishing is not the author

of evil. You are the sole originator of the ill. "Ah", so A may cry out, "but can you not give me light, sight, instruction, sympathy? Can you not at least teach me to be good?" "No", B must reply if he is a logical believer in the sole efficacy of the private free will of each finite agent as the one source under divine justice of that agent's ill, "No, if you deserve light, or any other comfort, God being just would enlighten you Himself, even if I absolutely refused. But if you do not deserve light, I should preach to you in vain for God's justice would harden your heart against any such good fortune as I could offer you from without even if I spoke of men and of angels. Your free will is yours. No deed of mine could give you a

free will for what I gave you
 from without would not be
 your free will at all. Nor can
 any one but you cause your
 free will to be this or that. A
 great gulf is fixed between us.
 You and I as sovereign free
 agents live in God's holy world
 in sin tight compartments, too.
 I can not hurt you nor you me.
 You are damned for your own sins
 while all that I can do is to
 look out for my own salvation.
 This is the logical inevitable
 result of asserting that every ill,
 physical or moral, that can
 happen to any agent is solely
 the result of that agent's own free
 will, acting under the government
 of divine justice. The only possible
 consequence would indeed be that,
 we live, every soul of us in

separate, as it were, in absolutely fireproof, free will compartments, so that real coöperation as to good and ill is excluded. What now cynical denials of reality of any sort of a moral world than is involved in this horrible thesis which no sane partisan of the abstract and traditional free-will explanation of the source of evil will today maintain, precisely because no such partisan really knows or can know what his doctrine logically means while still contending to maintain it. Yet where one asserts with pious obscurity that, "no harm can come to the righteous" one implies with logical necessity just this cynical consequence.

If the theory of the free will is abandoned another must be put in its place. Sin is the result

of natural law. If conditions are exactly the same and the same physical laws are put in motion the result will always be the same. A hot iron brought in close contact with the human hand always burns. Man is given the power to know right from wrong. Every phase of life surrounds him. He has knowledge of good and evil. He is tempted. He may either resist or yield. It is within his power to do either. His fellow-man may help him. Man may sin but the influence of one human life touches many others, and either helps or harms. By having the desire one may influence another to better and nobler things. Evil and sin are in a great degree caused by the association of men and if caused by that

they may be restrained by the same forces exerted in different forms.

Man does not live alone. He is not in a sin tight compartment but in an open one susceptible to all influences good or bad. One soul must coöperate with another in order to attain the perfect goal. God punishes man for his sins. Who is it who can not say that a guilty and aching conscience is not the worst of all pains. This moral world is created out of the influence one human being has over another.

Adam and Eve came into a sinless world. Good, Evil and Man go hand and hand together. They had no conscience for they had no knowledge. But with their experience came their

knowledge that they had done wrong, that they had sinned and they were afraid of the punishment which they knew that they deserved.

No amount of knowledge of the good will make a man good, or purge his nature from its original taint of evil and selfishness. God is the powerful, the high situated, the lofty, the high-minded, the pure, in contra-distinction to every thing low, mean, low-minded, hateful and vulgar. Good at all times proves itself useful while evil proves itself harmful. The good are those who wrong no one who never violate, who never attack, who never retaliate, who entrust revenge to God, who live aloof from the world, who avoid

all contact with evil." (Genealogy of Morals, Nietzsche p48)

Plato says, (Pol. I p 72.) If there was no evil we should have no need of anything that would do us good. "By good we mean something that when it comes or is expected we actively welcome, try to attain or keep it and regard with content. By evil, in general, we mean whatever we find in any sense repugnant or intolerable." (Rogee p. 17.)

Evil is within us, in our souls for Plato (Charmides 156 E) are these words, "For all good and evil whether in body or in human nature originates in the soul."

"That God must be represented as he is; not as the author of all things, but of good only. We will not suffer the poets to say

that He is the steward of good
and evil or that he has two
casks of destinies" Republic p 379.

Reward.

The two paths of human conduct each lead to an ultimate goal - the good life to a life of service and satisfaction and a life eternal; the bad life to a life of waste, of regrets, of pain and total destruction. The resultant mental condition caused by the kind of life lived may be called reward or punishment. Most qualities of life are mental for life is measured by the effects upon the human mind.

Man is subject to evil tendencies and temptations - the former within and the latter without. Both of these act upon the mind every day. Temptations befall one everywhere. These temptations {if} overcome are victories for the good and defeats for the evil. All conduct affects human life. First the subjective effect upon the doer

and secondly the objective effect upon those who come in contact with the doer. Such conduct if good has an elevating influence, therefore upon two classes of people, one always in the first class and perhaps many in the second.

Rewards may be of two kinds - one which is desired and sought after and one which is evaded and dreaded. There is a distinction between punishment and reward. Although two kinds of rewards have just been referred to. The ^{first} is a positive thing, a benefit to be desired while the second is a negative thing, the lack of any personal benefit. A life of work, energy, toil and prudence is rewarded with success, while a life of idleness and laziness is

not rewarded by anything in particular except failure, which is the lack of reward. A reward is the compensation one receives for doing a good act or deed. Reward is the result of action which is for good. The combined actions of every day make a life. If a man uses his time while on earth giving to the world the best that is in him, using every influence for good and against evil, reaching out to help others in the broadest sense, at the same time using every moment in advancing his own condition and in attaining a more perfect condition of self, the opinion and judgment of the world is that his life has been good.

A man will be good if he knows that there is something in store for

him at the end of a period, if ~~that~~ something is what he desires. While another man will be good on account of the fear and dread of something that may come to him at the end of that period. Such good conduct is not of the degree as that conduct which is good for the sake of being good. The boy who refrains from doing some wrong deed for the sum of a dollar is not inspired with the highest motive. Another boy refrains from the commission of some act because it is wrong. There is a vast difference between the degrees of goodness. The first is better than evil for in spite of the motive, character and good habits are being formed, but the second contains the higher motive and is far more commendable.

Joy, happiness, and satisfaction are the rewards for right conduct. It is one's duty to lead a good life. Instinctively one feels the reward of satisfaction after having performed duty. No matter what one's belief may be, one ought to feel it a duty to lead a good, moral, life, and when the death-knell is sounded and the account of the good and the evil deeds is taken, the departing one can go easier if there are more good deeds than bad ones to his credit. A reward received without knowledge or expectation is more highly prized than one whose deeds were done with the expectation of it.

Human conduct is followed by reward or punishment and these are the results of the two extremes of living. Reward influences

human conduct to better and higher planes of living. Intemperance is an evil habit. Men know the effects both mental and physical. Temperance is a commendable habit and men know its effects. The former life leads to pain and sorrow, while the latter life leads on through a life of joy, of pleasure, and of satisfaction.

Happiness is never the reward of evil doing, but on the contrary is the result of right living. Joy is the result of an unburdened soul and satisfaction is the glow of youth, the blessing which accompanies joy and happiness and implies the lack of regret, remorse, pain, and woe.

No doubt, the belief that a life lived in conformity with the higher moral principles and

teachings of the Christian religion
will bring its reward, both here
and hereafter has caused many
to strive harder to attain a more
perfect condition of self and to
refrain from doing many evil
deeds.

Reward of life after this one
is what many crave, while many
are good because of the fear of
punishment. Both of these motives
have vastly influenced human
conduct and have caused beneficial
results in the lives of all humanity
overturning toward the realization
of a more perfect life.

Punishment.

The world without man was free from the present and many other problems. With man came good, evil, sin, reward, and punishment. From the beginning in Adam's time there has been sin and there has been punishment. All through the centuries down to the present time man has been punished both mentally and physically. Punishment has been inflicted both by God and man in the greatest extent.

As soon as Adam and Eve had sinned they knew that they had done wrong and that a punishment awaited them. They were afraid when the angel of God came to drive them from the garden ^{Eden} to place the punishment upon them.

As long as the world lasts there

will be evil and punishment. Laws must be obeyed, their infractions will be punished. Punishments result in pain, both mental and physical, either present or future.

The old theory of punishment was that a law broken, atonement must be made. Where a wrong had been committed, the wrongdoer should be inflicted with an equal pain in order to even up for the wrong committed. This is the theory of the old Testament - an "eye for an eye, and a tooth for a tooth". Some believe in its doctrine yet, but happily it is losing ground and a better theory is taking its place. The belief in a hell is the belief in a punishment. That there should be a hell is the logical result

of believing that punishments are retributive and for the atonement of one's sins.

That there is a place called Purgatory is caused by the same belief. Souls, it is believed, are put into subjection there, and are made to suffer and atone for their sins and evil doings fitting them by such process for a better life. The fact that they have been evil and must be purged of that evil before they can be allowed the peace of a better life requires the existence of a Purgatory or some other place of like character where such punishment may be exacted.

Punishment is not retaliation. In the Apologue of Protagoras (Vol. p324) Plato says, "No one punishes the evil doer under the notion or for the reason that he has done wrong—

only the unreasonable fury of a beast acts in that manner. But he who desires to inflict rational punishment does not retaliate for a past wrong which cannot be undone. He has regard to the future and is desirous that the man who is punished, and he who see him punished, may be deterred from doing wrong again. Punishment is for the sake of prevention and not for retribution, thereby clearly implying that virtue is capable of being taught."

The belief in a Purgatory and a Hell is one of long standing and many people have wondered and are still in doubt as to whether or not there is a punishment of either kind awaiting human beings after this life is ended. These are very interesting questions but really

not within the scope of this paper to discuss

The effects of reward on human conduct have been shown and it remains to show the corresponding effects of punishment. The breaking of natural laws, of spiritual laws, of governmental laws, each bring a train of circumstances and feelings both mental and physical and place both body and mind of the evil doer in subjection. This subjection is punishment. This punishment is either retributive or reformative.

The theory of retributive punishment has been surpassed by that of the reformative theory. Though the latter doctrine is more modern, yet it is the one presented by Plato many centuries ago. The reformative theory is altruistic for its advocates desire the greatest benefit to the one punished.

Although lying dormant for so many years, yet in this day and age of enlightenment it has come to stay and to be improved.

In the retributive punishment there was no thought, no feeling, no desire to better the condition of the offender. The only motive was for the atonement of the wrong committed. The only apparent object was to equalize the amount to wrong conduct by balancing it with an equal amount of punishment. The modern theory is to reform. Punish the offender not for the wrong committed in itself, but for the reformation and prevention of future crime by him and by others. If the punishment so inflicted is the deprivation of something of value or the detention of one's person it is in either case to reform the

offender and to restrain him and all others for whom he is an example.

That the theory is a much better one in every sense is accepted by all thoughtful people. Such punishments may be either mental or physical. While it is true that each overlaps the other very much, yet it will be attempted to show wherein they differ.

The thought of punishment brings to mind immediately one in authority.

The reformatory or preventive theory is almost invariably put into practice in the government and discipline of children, but the most important class of cases, it may be said, is that of

the offenders of organized government and established law. The mother who whips her child does

so with the highest motive - that of changing his evil ways into good ones. It hurts her as badly as it does the child. The physical pain which he endures for the time being will be a very forcible reminder of the wrong committed and will have a very wholesome effect upon him when he is again tempted to repeat the former wrong.

The ordinary mode of punishment for crime is by confinement in workhouse, jail or prison. For violation of prison rules and insubordination other punishments are resorted to. While in confinement which is physical, the prisoner has to sacrifice all of his pleasures and conform strictly to a set of rigid rules. Even the deprivation of liberty and freedom would be

enough to reform and restrain many from the repetition of their crime. While the stigma and disgrace attached to being put in prison even though for an hour would be enough to restrain and reform others. No doubt this fact of punishment alone prevents much crime.

Along with the deprivation of liberty and friends the prisoner has the humiliation and disgrace attached to him, has his reputation ruined, his name and honor blackened. These punishments are mental. For many the agonies connected with the latter are much harder to bear. Hundreds would willingly bear the punishments of the body if they could be spared the disgrace, the dishonor, and the humiliation of being put in prison.

The effect is to raise the plane of conduct and to restrain even acts in the future.

While this theory has for a long period prevailed, yet some of our states have gone a step farther, and put into operation the parole system and the indeterminate sentence. The difficulties that had to be overcome and the labor that was necessary to accomplish this great step by legislative authority need not be related here. The ethical effect upon the prisoner, upon the people, upon the one in direct authority will be for good. On account of it the aggregate good of the world will be vastly added to, while the aggregate evil will be greatly decreased.

By the indeterminate sentence is meant confinement for such

a period as is necessary to transform the offending citizen into a useful one. Suppose a prisoner sentenced for a period of from two to ten years. If reformed or transformed into a useful citizen at the end of two years freedom ~~was~~ to be given him, how great would be the influence brought to bear upon him to do his best to hasten the accomplishment of the object for which he is detained. It takes only good common sense to reason thus far. By keeping the prisoner under personal supervision after his release and by compelling him to report periodically to some officer in authority the paroled prisoner will take great care to live a life free from violations of the law. With the fear of being again taken into

custody for the slightest violation of any rule or law confronting him the prisoner's conduct is very much improved and he is made into a useful and law abiding citizen.

The same principle has been put into practice for many years in the custom of releasing a prisoner so many days or months before his time expires on account of good behavior. A premium is placed upon good behavior and strict obedience to the rules and orders from superiors. The reformation of the prisoner is accomplished within a shorter period and he receives the direct benefit of his own efforts.

The only true kind of punishment is that which has reformation and prevention as its objects.

A discussion of the
Different Kinds of Punishment.

For centuries history has repeated itself in the examples of self-inflicted torture. The most familiar is that of the monks who have inflicted severe pain upon themselves by flogging to the extent of great gashes and cuts. The object of this pain being to punish the body in order that the soul may be benefited; in order to raise the soul to a higher moral and religious plane. The most common way of self-punishment is from over-exertion by working, running, or by self-starvation. The practice is not confined to any one class of persons either past or present. It is very common for people of today to punish themselves for past wrongs. A man who has the habit of strong drink always feels in some degree sorry after each debauch. His experience has cost him money, friends, and health. With these thoughts of disgrace bearing down upon him and an exhausted body to remind him of his folly and sin, he cannot divert his mind from it and the sin. Alone in his room and feeling himself without friends he is penitent and wishes to be better and to atone for his evil. He wishes to make himself right with himself.

He knows his weakness. He cries out in agony for help. Who can help him. He makes resolutions only to break them at the first opportunity and after struggling with the inner man against his temptation he finally decides that in order to make himself better he must do something that will require great physical exertion, that he must punish his body in order to relieve his soul.

At the close of this punishment he feels differently toward the world and differently toward himself. This has brought relief. In this case one instantly feels that the bodily exhaustion was inflicted for the atonement of his sin. This victim wanted his soul raised and so in the case of the monk he wanted his soul made better. His sin was not some immediate wrong but a continued every day life which was not up to the highest standard.

There are only two ways of administering human punishment and they are by self and by a second person. Both ways have always been practiced and each has its varieties. The methods of punishment administered by second persons vary with the different ages. A great variety of kinds of cruelty have been inflicted upon the suffering humanity - since the beginning and each

has had its degree of torture. The easiest division of them is that class which inflicts pain but does not take life, and that class which takes life. In the first there are flogging, stocks, pillory, imprisonment, thumb-screwing and banishment, while in the second division is flogging to death, starving to death, crucifixion, beheading by ax and guillotine, shooting, burning at the stake, hanging and electrocution.

Modern civilization has eliminated the greater number of these and some believe ought to have eliminated a great many more. It would seem barbarous to stone one to death, or boil him at the present time, and yet the newspapers almost daily give accounts of hanging, electrocution and burning at the stake. It is a point to consider whether our civilization has done in this line all that it should.

Along with the physical punishment goes the mental punishment hand in hand. One can exist without the other but only in those cases in which the criminal is so hardened by crime that no more disgrace and shame can be added to his already shattered honor and reputation. The human being in states

prison is deprived of his liberty, he's bound down by severe rules and regulations, he is deprived of his happiness and almost his life. For some violation of prison discipline he is placed in a dungeon or in solitary confinement - he is deprived of everything almost that goes to keep up life. His condition in this dark, damp, filthy cell is almost unbearable. This is a severe measure, but as severe measures are necessary at times in order to cause submission this is tolerated.

With nothing to occupy his mind but himself, his condition and his sin, his entire thoughts is focused on self and those who put him there. He will either feel sorry for his own sin or he will rebel and his attitude towards the authority - will be one of revenge. Away from friends, without influence or money, deprived of life's necessities and suffering agonies both body and mind, his pain sometimes is almost beyond endurance and death would be welcome and a relief. If in darkness, give him sunshine and his burden would not be so hard to bear. Darkness when continued for any length of time has such a depressing effect upon the human mind. Light brings hope, cheer,

while darkness brings gloom, desolation and despair.

Italy practices solitary confinement instead of capital punishment. The prisoners die at a very early age. Those who live go insane. Some claim that more than three-fourths of those who live go insane. The effect is almost too terrible to think about. The result is to take away all hope, mind and life. There is no excuse, no defence in permanent solitary confinement. Such punishment for even short periods is only justified on the grounds that it is necessary to cause submission. It may be justified for short periods in order to maintain discipline, but there is no justification for the filth which is so often prevalent in such places.

Reformation cannot be accomplished without repentance and no repentance without submission to discipline. Repentance is often brought about by a short period of solitary confinement, more always by mere imprisonment. As repentance is an inward mental state, it can only be judged by the actions of the prisoner. With confinement almost always come a change of ways. But if repentance comes the desire to live a better life is coupled with it. These desires with the desire for

liberty make different conduct and a different citizen. Therefore in such a case punishment has accomplished its end and object.

A change of life or conduct while in prison is not always accompanied by repentance. In such cases as where the prisoner very unconcernedly serves his term, only to get out and commit crime again - the punishment is merely physical. He has no revenge, his mind is free and easy, he feels no pain, imprisonment he enjoys and takes it as part of his allotment in life. For him there is no repentance, no mental pain, no desire to do better. For him the punishment is purely physical.

Repentance often comes without imprisonment at all. Mental punishment, pain, sorrow, remorse often come without imprisonment. Many crimes are committed and go unpunished for years because undiscovered. The guilty one has suffered much. He has lost home and friends, he has roamed around the world, he has been a "man without a country". He has repented and has become a different man. What he desires now is to atone for his crime, to pay the penalty and to obtain

recognition from his fellowcitizens that he is a different man. He has roamed long enough. Life of this kind is unbearable. He must have a change. The pangs of conscience he can stand no longer. Anything would be preferable to a guilty-conscience and being a fugitive from justice. With Shakespeare, he says, "A guilty-conscience is like a thousand swords." In order to get relief the guilty-though-a-thoroughly-repentant lawbreaker and criminal goes back to the scene of his crime and gives himself up. He pleads guilty and is sentenced. In his case he is atoning for the wrong committed and is receiving punishment which is not reformativie but retributive, for the object of the reformativie punishment was accomplished before his surrender.

Under the present indeterminate sentence and parole system he would be released as soon as the necessary time had elapsed and he would be counted as one of the reformed criminals. But why did he give himself up? So as to relieve his conscience by atoning for his crime. The periods which are necessary to produce this feeling of pain and remorse are

different with different people, but in cases where the repentance takes place, it is in reality the same in all cases except in the difference of time for it is the same process and the same result.

Many examples are known. In brief a youth committed a wrong against his mother. In later years after he had grown wealthy and had gained distinction, he traveled all the long way back to the home of his youth and suffered humiliation, and pain in order that he might live the remainder of his life with a clear conscience. Both different characters come different ways of doing things. Where one person would do and act perfectly, not omitting even the smallest detail, others with a less sensitive conscience would relieve it with less danger, humiliation or pain. Some would relieve their conscience by returning only a portion of a stolen article, while others in order to gain some relief would have to make total restoration and sometimes more besides.

Not uncommon is the conscience fund. Oftentimes

money is stolen or illy-gotten and though kept for many years is often returned with interest, but always with the identity of the sender unknown. Such sums are credited to the Conscience Fund account. Money is often sent in but always to relieve a guilty-conscience. It is a retributive punishment and in this way atonement is made. This is not a new idea and it is one for which we do not have to go far to find an example. The Kansas University authorities have such an account. Students have for various reasons sent in money unidentified, probably to pay for supplies thoughtlessly taken or for a graduation fee which remained unpaid.

Discussion of the Relation of Physical and Mental Punishments.

Keeping in mind the main thought that all punishment is reformativè and preventivè in character, the ethical effects upon all concerned will be considered. Physical punishment is capable of being administered in various ways as has been pointed out and in many different degrees from the extreme mild to the extreme severe forms. At first thought one quickly says that in physical punishment the offender suffers bodily pain, that the suffering for the wrong committed is very prompt in following the act done and that the effect is very quickly realized; that the desired mental effect is more quickly attained. Take for example the child. He has disobeyed. He is whipped. He very quickly connects the disobedience with the whipping and draws the correct conclusion. All this lasts only a few moments. Suppose that instead he is locked up in an upper room. While there for two or more hours his mind is occupied with various

things, possibly the bric-a-brac, pictures, books, or thoughts as to the revenge he will have or what he will do as soon as he gets out. His mind is not on the punishment nor the wrong committed and in this case the object for which he was sent upstairs has failed. The case is the same with a prisoner in jail. He is not whipped but he is deprived of liberty for a longer period, is deprived of the luxuries of home, is given coarse food to eat and the effect of his physical suffering is that of the boy. The mental pain is present in each case. Of course there are exceptions where mental pain never is felt, but these are eliminated for the present. If the prisoner ~~were~~ given every comfort of home and its kind treatment he would not be punished any more than the boy who was sent upstairs, so that in this case also the object and intention would also fail.

In the case of physical punishment the offender suffers pain. He connects the pain with the wrong. He clearly sees the result which is desired. He realizes that such violations always bring

such punishments. From this time on he reasons that the correct performance of duty and obedience to law will eliminate punishment. Thus the desired end is obtained and he reforms. He himself makes it unnecessary for the punishment which is so painful to him. The effect has been good. An evil man has been made into a good one, an unuseful citizen has been transformed into a useful one.

Physical punishment is more easily inflicted than mental punishment for with an equal amount of effort an equal amount of pain is inflicted upon different persons, and mental punishment though in different degrees accompanies each. While in pure mental punishment where no physical pain is administered an equal amount of effort expended upon two persons may have very unequal effects - the effects due to the conscience and their temperaments, their attitudes and mental make-ups in general, and on this account the restraining effects

upon different persons are more nearly the same than the restraining effects where purely mental punishment is administered.

With the hardened heart and the stunted conscience the physical punishment is better because the pain from it is more severe, felt more quickly and the desired results more immediate. In dealing with that class of offenders who care nothing for degradation of name and reputation, good common sense would tell one that bodily pain is most necessary for reformation and prevention.

The effects are different on different people. The new and unhardened offender is more quickly punished with mental pain than by physical pain and his reformation is more complete, while with the constant lawbreaker it becomes necessary to cause submission and repentance if possible by severer means. It is interesting to note that there are children upon whom whipping has no effect whatever. Though disobedience is always followed by a whipping

there is no restraint. In similar cases the ^{is} true of criminals. For such offenders one quickly admits that some other ways of reforming must be resorted to. Again over-zealousness in the performance of the ^{required} duty - in administering physical punishment often causes one to lose his temper, and to do acts which in themselves are wrong and which have an evil effect upon the one punished and the one punishing. In that case the ethical effect produced contains more ~~eff~~ evil than good. In the case where anger and revenge is shown by the one in authority, it antagonizes the one punished and creates within him a feeling of stubbornness and hatred, the exact opposite of what is desired and so the objects of the punishment are thwarted and lost. It is admitted now and has been before this that mental punishment often accompanies physical punishment, but the thought that is intended to be conveyed

is that the object desired is brought about easier by causing mental pain by first administering physical punishment.

While there are many defects in the system and in physical punishment, yet until a better way is offered its use will be continued. That a better way and a better theory is being offered is shown by the fact that in many prisons every effort is being made to reform and to restrain the prisoner and at the same time to create within him the best mental attitude towards the remainder of the world.

So far in dealing with this subject capital punishment has been scarcely referred to. What are the ethical effects. The man who is familiar with the sight of blood, soon learns not to be affected by it. The man in the packing house who is accustomed to take the life of the steer or the hog is able not to let it affect him. In similar case a man who often takes human life, soon ceases

to be affected by it. What is the effect of taking human life? Is there more good in it than evil? Does it restrain the crimes for which it is the penalty? Does it reform the one who suffers the death? There is a diversity of opinion upon the subject. The one who suffers the penalty surely does not have time to reform afterwards. The number of murders is increasing in greater proportion than the population. The taking of life is more common every day. The excitement it arouses is less intense and with Pope the people say.

"This is a monster of such frightful mien,

As to be hated needs but to be seen.

Yet seen too oft familiar with her face,

We first endure, then pity, then embrace."

The effect of witnessing an execution has become so well known that today all executions are comparatively yes, almost completely private. People who witness executions have a tendency and a desire to take life.

If such punishment does not reform the criminal it is wrong and if it does not restrain others it is wrong again. If it does not accomplish its object and its theory is correct it should be either more severe or less severe. That it could be more severe is out of the question unless extreme cruelty be administered. Strangulation and electrocution are as severe as such punishments could be. Even in this last modern way of committing states' manslaughter and legal murder in order to put the victim out of his misery it is often necessary to resort to powerful drugs.

The evils are many and great. The condemned is not benefited. The one whom he murdered is not benefited, the executioner is not benefited and the people are not benefited. Others are not restrained. It has a bad influence upon all. The object for which it was done if for retribution is wrong and if for reformation and prevention has failed. Therefore legal murder is wrong from all points of view.

Punishment has for its aim and ideal the reformation of the evildoer and the prevention of future wrongs supplemented by the promotion of higher ideals of citizenship. Physical applications of any kinds of punishment bring into action two forces, one being represented in the person in authority and the other upon whom it is administered. One force is that of application, the other is that of resistance. Each is physical but each is always accompanied by a corresponding mental condition. Each force has an antagonistic effect upon the mind of the one in whom it originates. As long as the prisoner feels that the punishment is retributive and that it is for atonement the true objects will fail.

By mental punishment is meant that punishment which is brought

upon the prisoner from within. Any external cause which will compell him to turn his thoughts upon himself and which create within him feelings of penitence and a desire to live a better life is what is meant by mental punishment. It is an aching conscience with a craving for forgiveness. Though the term may seem indefinite on account of the close connection between the two punishments, it is desired to convey the meaning that mental punishment is that which is brought about by mind over mind, by one in authority which will cause the offender to realize his wrong, his crime, his sin and to suffer mentally for the wrongs committed.

He who is in authority has one end in view and that is to restrain and reform the prisoner and to elevate him

to, a higher plane of citizenship. Then with that aim and those thoughts filling him and permeating every action toward the prisoner, his conduct, his motives and his attitude will be of a higher standard and will react upon the prisoner.

If it is possible to make him understand the real reason why he is detained, that his detention is purely for the prevention of future wrongs by himself and as an example to society, and for his own reformation it creates within him a different plane of thought and a different attitude toward those in authority - and towards the whole world in general.

Mental punishment then brings the prisoner in direct contact with his own sin. If it can be brought about in some other way than by using physical punishment first, it is the best for us

so doing it has a less tendency to antagonize the prisoner. The one in authority has a better opportunity of remaining calm and dignified. Such treatment has its beneficial effect upon the one administering it, making a better man of him. The effect upon the crowd in general is better for when they know the real object to be sought, their minds will be centered on it. They will restrain themselves from committing a crime for to commit one will mean restraint for an indefinite period.

This idea of influencing a man to be good, to reform is good in regard to those who are sorry for the wrong they have committed, but in regard to the hardened criminal, it is weak. For a hardened criminal isn't going to reform that easily. He will have to be kept in prison for a long time

and after having been imprisoned for a long term he may then be influenced as the juvenile criminal would be.

Another fault to find with this slow way of punishment is that it is slow, that people in their excitement, and anger want a punishment administered that is retributive. That is the reason for lynching and any other lawless act. But in this as in any other thing of public concern, society will have to be educated up to it and public opinion will have to be created in its favor. Whatever influences thoughts, influences conduct. Therefore society learns and realizes that to commit a crime does not mean from ten days to a few years in the penitentiary but that it means a detention of the lawbreaker for an indefinite period until it is thought that he can

restrain himself, then and only then will they be more carefully and try harder to live according to the law so as to avoid the penalty.

There are no doubt many practical difficulties against the theory of punishment as laid down in the preceding pages, but this discussion has not been intended to be absolutely practical - it has been theoretical, and while these two theories should be close enough together to join hands, it is believed that the theory as laid down here is in the main correct. Human nature must be studied. All of the world is imperfect but since imperfect beings are compelled to administer the world's affairs, how can it be expected then to work out all things practically?

W W Wilkins

University of Kansas Libraries



3 3838 100532001